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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,186	11/05/2001	Yasushi Kohno	TKA0032	5700

7590 05/30/2003

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 05/30/2003

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 13

Application Number: 10/007,186
Filing Date: November 05, 2001
Appellant(s): KOHNO, YASUSHI

Michael S. Gzybowski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 26 March 2003.

(1) *Real Party in Interest*

The real party in interest is contained in the brief: Agritecno Yazaki Co. Ltd.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Applicant identified there are no known appeals or interferences that would directly affect or have a bearing on the pending appeal.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1 and 2-3 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,107,051 Job et al. 08-2000

RO 113935 Badiu et al 01-1996

Smith, Mike L. "Seed Soaking Damage in Some Grain Legumes" Journal of New Seeds, vol2, no. 3, (2000), #27

Evans, Erv et al "Starting Plants from Seed" NC State University, Horticulture Information Leaflets, Light section, [retrieved from internet on 21 November 2002 www.ces.ncsu.edu/depts/hort/hil/hil-8703] (January 1999) page 3 of 6

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 6.

Examiner has withdrawn the rejection under 35 U.S.C. 103 (a) for claim 3 over Job et al. All other rejections under 35 U.S.C. 103(a) are maintained as set forth in Paper No. 6.

(11) Response to Argument

Examiner maintains that Badiu et al in view of Smith is a valid combination that teaches the limitations set forth by applicant including the steps of soaking the seeds in a dark place and drying the seeds immediately after. Examiner maintains that this characterization of the cited art is a correct basis for rejection. For example, Badiu et al teaches that the seeds are soaked in water in a dark place since dark is a relative term that can be defined as low light or no light and has not been clearly defined in

applicant's specification. Therefore, the vat/dish taught by Badiu et al that the seeds are soaked in is inherently a dark place because it will have a reduced amount of light then what the seeds would receive when exposed to natural sunlight. Furthermore, examiner maintains that the drying step follows the soaking step as discussed in paragraph one of the English translation.

The broad wording of claim 1 merely implies that the soaking is done in a dark place, but does not explicitly state that the drying is done in a dark place until claim 3. However, in paragraph one of the English translation Badiu et al teaches that the drying can be performed during a pelletizing step in which seeds are introduced into the pelletizing equipment and therefore are inherently being dried in a dark place. Badiu et al teaches a seed treatment method that improves germination performance, but the Smith reference was incorporated to explicitly illustrate that the specific steps of soaking seeds and then drying the seeds increases germination. Smith discusses legumes, but the art is still a valid application since it is notoriously old and well-known in the art that all kinds of different plant species and morphologies inhibit water to germinate and all will stop germinating when dried. The main reference Badiu et al teaches that seeds inhibit water to improve germination and the second reference to Smith was included to illustrate that drying after soaking helps with germination even more.

Applicant argued that Badiu et al and Smith do not teach soaking the seeds for the appropriate amount of time for the claimed effect. However, applicant has not included a time frame in any of the claim limitations and is therefore an invalid argument.

The Evans reference teaches the effects of light and dark on seed germination. It inherently teaches the effects on a seed during pretreatment because certain seeds are going to require different light requirements to prevent an early onset of germination. Evans is provided as a teaching that illustrates the effects of light on seeds and conveys old and well-known knowledge in the field, knowledge of accepted wisdom, for one of ordinary skill in the art to control the onset and rate of seed germination.

Regarding arguments pertaining to the rejection over Job et al, the examiner maintains that the soaking step and the drying step are all part of the complete method taught by Job et al and that the drying step does in fact follow the soaking step (Job Col 3 line 45). Job et al does not explicitly state the benefits of the drying step in terms of germination. Consequently, the teachings of Smith were introduced as an example that drying after soaking does have beneficial effects for germination and that this is accepted general knowledge in the field. Examiner has withdrawn the 35 U.S.C. 103(a) rejection over Job et al. of Claim 3 that the seeds are dried in a dark place.

In conclusion, the examiner has satisfied the burden of establishing a *prima facie* case of obviousness and the examiner maintains that applicant's claim limitations are extremely broad and entail steps that are very old and well-known in the art of seed germination. The effects of light and darkness on seed germination have been studied extensively. Applicant's broad claims do not patentably distinguish applicant's method over the teachings of the prior art nor over the knowledge of one of ordinary skill in the art.

Application/Control Number: 10/007,186
Art Unit: 3643

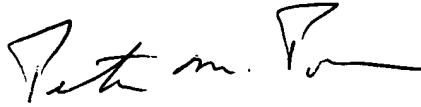
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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

AMV
May 27, 2003

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